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REGULATORY AFFAIRS

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July 19, 2001

OFFICE OF THE  
EXECUTIVE SECRETARY

David Waddell  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLata) Service in Tennessee Pursuant to Section 271 of the  
Telecommunications Act of 1996*  
Docket 97-00309

Dear David:

Enclosed please find the Response of XO, Tennessee, Inc. and Time Warner Telecom of the Mid-South, L.P. Regarding AT&T's Motion to Dismiss in the above-captioned proceeding. Please contact me or Whitney Malone with any questions.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: *Henry Walker by*  
Henry Walker  
*WM w/ permission*

HW/wlm

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE: BELL SOUTH )  
TELECOMMUNICATIONS, INC.'S )  
ENTRY INTO LONG DISTANCE ) DOCKET NO. 97-00309  
(INTERLATA) SERVICE IN )  
TENNESSEE PURSUANT TO SECTION )  
271 OF THE TELECOMMUNICATIONS )  
ACT OF 1996 )

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**RESPONSE OF XO TENNESSEE, INC. AND TIME WARNER TELECOM OF THE  
MID-SOUTH, L.P. REGARDING AT&T'S MOTION TO DISMISS**

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XO Tennessee, Inc. ("XO") and Time Warner Telecom of the Mid-South, L.P. ("Time Warner") agree with the arguments set forth in the Motion of AT&T Communications of the South Central States, Inc. ("AT&T") that it would be premature at this time for the Tennessee Regulatory Authority ("TRA") to commence proceedings to evaluate whether BellSouth Telecommunications, Inc. ("BellSouth") has met the requirements of 47 U.S.C. § 271 for entry into the interLATA market.

By the carrier's own admission, BellSouth does not yet know – and therefore cannot address – the outcome of other pending TRA investigations regarding Section 271 issues. There is no dispute that any 271 application made by BellSouth at this time will not be the same filing BellSouth makes to the FCC and will require another, supplemental filing to reflect the outcome of those other TRA dockets.<sup>1</sup>

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<sup>1</sup> On April 8, 1999, BellSouth moved to withdraw its earlier 271 application on virtually the same grounds now argued by AT&T. BellSouth explained:

[T]he filings made in January 1998, as supplemented by additional filings in July 1998, do not now fully comply with the directions previously provided by the Authority in connection with these matters. Specifically, in its earlier orders the Authority required BellSouth to file with the Authority a copy of its proposed Section 271 application to the FCC as well as all supporting documentation so that the TRA

*(footnote continued on following page ...)*

The TRA cannot, of course, dismiss a Section 271 application that has not yet been made; nor can the agency legally prohibit BellSouth from submitting its revised application at whatever time BellSouth chooses to make it.

XO and Time Warner suggest, therefore, that the Hearing Officer may wish to defer a ruling on the Motion to Dismiss until after BellSouth has submitted its 271 application. In the meantime, however, the TRA should reiterate that the agency intends to follow the complete-when-filed rule adopted by the FCC (described more fully in XO's related filing made today in this docket). Such action would further demonstrate to the parties that any 271 filing which does not contain "all of the factual evidence on which the applicant would have the [Authority] rely"<sup>2</sup> will likely be found incomplete and, therefore, dismissed.

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(... footnote continued from previous page)

would have available to it the same or substantially the same information as the FCC. While BellSouth has endeavored to comply with that order, events have overtaken the process and BellSouth cannot represent that the filing which is presently before the Authority does in fact constitute the complete filing that would be made at the FCC if that filing were to be made today, or any time in the near future.

Moreover, although BellSouth has supplemented its filing previously, BellSouth cannot represent to the Authority that another supplemental filing will not be required to conform to the Authority's direction before a Tennessee filing is made at the FCC.

*Notice of Voluntary Dismissal and Withdrawal*, at 1-2. BellSouth's reasoning would seem to support AT&T's motion.

<sup>2</sup> *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA 01-734, (March 23, 2001), at 3. The TRA has already declared once that it intends to follow the same rule. See *Initial Order Accepting BellSouth's Motion of Voluntary Dismissal and Withdrawal*, Docket 97-00309, June 1, 1999, at 16.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of July, 2001, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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